

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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EUGENE L. CHERRY,

Plaintiff,

v.

Case No. 16-1606

WARDEN ECKSTEIN, et al.,

Defendants.

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**ORDER**

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On April 12, 2018, this Court granted Cherry leave to appeal without prepayment of the filing fee and assessed him an initial partial filing fee to be paid of \$2.01, pursuant to 28 U.S.C. § 1915(a)(2). ECF No. 101. On April 19, 2018, Cherry moved the Court for an order allowing his initial partial filing fee to be paid from his release account. ECF No. 102.

A release account is a restricted account maintained by the Wisconsin Department of Corrections to be used upon the prisoner's release from custody upon completion of his sentence. Wis. Adm. Code § DOC 309.466. The language of 28 U.S.C. § 1915(b)(1) suggests that a prisoner's release account may be invaded to satisfy an initial partial payment if insufficient funds are available in his regular account. *Carter v. Bennett*, 399 F. Supp. 2d 936, 936-37 (W.D. Wis. 2005). However, although the court can order disbursement from the Release Account for payment of the initial partial filing fee, the PLRA does not require the court to invade that account for payment of the balance. See 28 U.S.C. § 1915(b).

Because Cherry is unable to pay the initial filing fees from his trust fund account, I will allow him to use his release account. Cherry is reminded that after the initial payment the balance of filing

fees for both cases will be taken from his prison trust fund account. Because he proceeded without prepayment at the district court, both his district court and his appellate court proceedings will require Cherry to make monthly payments equal “twenty percent of the preceding month’s income credited to the prisoner’s account.” 28 U.S.C. § 1915(b)(2). “Nothing in this language can be interpreted as congressional intent that prisoners deplete savings or release account balances in order to pay off their filing fee debts.” *Carter*, 399 F. Supp. 2d at 936.

**IT IS THEREFORE ORDERED** that plaintiff’s motion to use funds from his release account (ECF No. 102) is **GRANTED**.

**IT IS FURTHER ORDERED** that the Clerk is directed to send a copy of this order to the officer in charge of the agency where plaintiff is held.

Dated this 24th day of April, 2018.

s/ William C. Griesbach  
William C. Griesbach, Chief Judge  
United States District Court